IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 854 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALAVATIBEN W/O. HARISING RANAJI CHARA - Petitioner(s)
Versus
COMMISSIONER OF POLICE & 2 - Respondent(s)

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Appearance :
MR S M SOJATWALA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1, 3,
GOVERNMENT PLEADER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 22/08/2007

ORAL JUDGMENT

1. The petitioner has invoked Article 226 of the Constitution to challenge the order dated 04.12.2006 of Police Commissioner, Ahmedabad whereunder she was taken into preventive

detention in exercise of the powers conferred by Sub-Section (2) of Section 3 of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short “P.A.S.A.”). It is stated in the grounds of order supplied to the petitioner under Section 9 of P.A.S.A. that the petitioner was indulging in bootlegging activities as a 'bootlegger' in nine cases of offences under the Prohibition Act which were registered against her during the period from 28.03.2006 to 29.11.2006. In each of those cases, investigation was under way and the petitioner was released on bail. It was found, on the basis of the facts of those cases, the material and documents indicating production of country liquor by the petitioner, that the alleged activities of the petitioner were likely to adversely affect public order in the sense that country liquor was causing danger to public health. Therefore, with a view to preventing her from acting in any manner prejudicial to maintenance of public order, it was found to be necessary to direct detention of the petitioner by the impugned order.

2. By filing an affidavit-in-reply of the detaining authority, it is *inter alia* stated as under:-

> “5..... I say that on receipt of the proposal along with the materials from

the sponsoring authority for detention of the detenue, I have carefully scrutinized, examined and considered all those materials and I found the same to be sufficient for detaining the petitioner. Thereafter, on the basis of the above materials, I have formulated the grounds of detention and all those grounds are true, correct, clear and proper. I say that in the present case, amongst the relevant materials, I have carefully examined the documents relating to the nine cases registered against the detenue and from those materials, it is clear that the detenue falls within the definition of 'bootlegger' as defined under Section 2(b) of the P.A.S.A. Act..... I came to the conclusion that the detenue is dealing in illegal liquor business and she is disturbing the public order, public peace and public health and it is likely that continuance of her antisocial and bootlegging activities may cause grave or widespread danger to life, property and public health. Therefore, after subjectively satisfying that the antisocial and bootlegging activities of the detenue cannot be curbed or prevented immediately by resorting to less drastic remedy of taking action under the

ordinary law, as a preventive measure, I have passed the order of detention against the detenue under the P.A.S.A. Act with a view to immediately prevent her from continuing such illegal, antisocial and bootlegging activities which are prejudicial to the maintenance of public order and the said order is passed with full application of mind and in compliance and in consonance with the provisions of the P.A.S.A. Act as well as the Constitution of India and the said order is legal, valid and proper.....”

3. Although several grounds are mentioned in the petition and the petition is listed for final hearing on several occasions since April, 2007 after its admission in January, 2007, learned counsel Mr.Sojatwala, who appears on record, could not remain present before the Court. It was, on that account that hearing was adjourned from time to time in the interest of justice till learned advocate Mr.Bhavesh S. Rayani took the responsibility of appearing for Mr.Sojatwala and made his sole submission. It was fairly stated by him that the issues sought to be agitated in the present petition were squarely covered by the judgment dated 02.08.2007 of this Court in Special Civil Application No.892 of 2007 wherein, it is held that likelihood of storage,

distribution and consumption of liquor in violation of the Prohibition Act causes danger to public health and consequently public order. Therefore, there is no requirement of any additional material in the form of expert's opinion or statements of witnesses to assume that illegal supply of liquor in large quantities was likely to cause danger to public health and such activities of any person would be likely to cause widespread danger to public health and thereby adversely affect maintenance of public order. It is also held that where public order is likely to be adversely affected by the activities of the person who is a bootlegger, he has to be deemed to be acting in a manner prejudicial to maintenance of public order. If the detaining authority were subjectively satisfied about the necessity of preventing such person from acting in that manner which is or which is likely to be or which has to be deemed to be prejudicial to maintenance of public order, an order of his detention could be made and has to be upheld.

4. In view of the above proposition of law, learned counsel Mr.Rayani sought to distinguish the facts of the present case by submitting that the scale of alleged activity of making country liquor was not very large. However, that was not borne out from the record and the material on record indicated that the petitioner was alleged

to have been involved in distributing country liquor on a large scale and raw-material for that purpose in the quantity of hundreds of liters was recovered in connection with the offences registered against her.

5. Therefore, no case having been made out to interfere with the impugned order and it having been found to be legal, the petition is dismissed and Rule is discharged with no order as to costs.

(D.H.WAGHELA, J.)

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